

Appl. No. 09/973,624
Amdt. dated September 24, 2004
Reply to Office Action of March 26, 2004

Remarks:

Pending in this application at the time of the outstanding Office Action were claims 2-20, 25-28, 55-60, 65-70, 80-93, and 98-100. The Office Action withdrew the allowance of Claim 28. The Office Action allowed claims 2-20, 25-27, 55-60, and 65-70 and identified claims 81, 84-87, and 92 as being allowable if rewritten in independent form. Applicant respectfully requests that the rewriting of allowable claims 81, 84-87, and 92 be held in abeyance pending consideration of this response.

With respect to the withdrawal of claims 94-97 following Applicant's *provisional* election of the "metal" species and "salt" species, Applicant respectfully requests that further examination for these withdrawn claims 94-97 (along with 21-24 and 61-64) proceed in accordance with MPEP §803.02.

Claims 28, 80, 82, and 83 Are Novel With Regard to Bhagat:

Applicant's claim 28 requires a non-oxide powder of which at least about 40% by mass is comprised of a plurality of tightly agglomerated compositions, each of said tightly agglomerated compositions comprising a plurality of primary particles tightly agglomerated together, wherein said primary particles have an average size in a range of about 1 nanometer to about 100 nanometers. While the Office Action asserts that Bhagat discloses agglomerated particles, the Office Action does not assert that the particles described by Bhagat are **tightly agglomerated**. The only discussions of particle agglomeration found in Bhagat fail to encompass tight agglomeration and relate instead to mere agglomeration (see Bhagat, col. 1, lines 41-43; col. 3, lines 31-38). Since the Office Action does not assert that Bhagat describes each and every limitation of Claim 28 (namely, Bhagat fails to disclose the "tightly agglomerated" limitation of claim 28), a prima facie case of anticipation under 35 U.S.C. §102 has not been set forth.

Accordingly, the Applicant respectfully requests that the Examiner withdraw the §102 rejection of claim 28 and the claims dependent therefrom, claims 80, 82, and 83.

Appl. No. 09/973,624
Amdt. dated September 24, 2004
Reply to Office Action of March 26, 2004

Claims 28, 80, 82, 88-91, and 98-100 Are Nonobvious In Light of Wolf:

As noted above, Applicant's claim 28 requires **tightly** agglomerated particles. Again, the Office Action asserts only that Wolf discloses an agglomerated powder. In contrast to the claimed invention, Wolf illustrates long chain-like agglomerates in Figure 1¹ (see the related PCT publication No. WO 98/37249). Since the agglomerated chains are long, the chains cannot be said to be tightly agglomerated (see Inventor's Application, page 6, lines 2-13 and page 7, lines 24-27, and Fig. 1 for a discussion of the undesirability of long chain agglomerates relative to the inventive tight agglomerates). Additionally, the Applicant has diligently searched Wolf for a method to ensure that the chains are tightly agglomerated. The Applicant could find no such method. Therefore, Wolf fails to disclose each and every element of the claimed invention and, for that reason, fails to create a prima facie case of obviousness.

Accordingly, the Applicant respectfully requests that the Examiner withdraw the §103 rejection of claim 28 and the claims dependent therefrom, claims 80, 82, 88-91, and 98-100.

Conclusions:

Thus, it is believed that all of the pending claims are allowable and that all of the rejections have been overcome or rendered moot. Accordingly, Applicant respectfully submits that the application is in condition for allowance. Favorable action is respectfully requested.

Respectfully submitted,



Robert L. Villhard
Reg. No. 53,725
Thompson Coburn LLP

¹ Applicant notes, that the published version of Wolf does not include Figure 1. PCT Publication WO 98/37249 has been concurrently submitted in an Information Disclosure Statement.

Appl. No. 09/973,624
Amdt. dated September 24, 2004
Reply to Office Action of March 26, 2004

One US Bank Plaza
St. Louis, Missouri 63101
(314) 552-6000
(314) 552-7000 (fax)